

## **IC 30-2-12**

### **Chapter 12. Uniform Management of Institutional Funds**

## **IC 30-2-12-1**

### **Application of chapter**

Sec. 1. This chapter applies to an institutional fund.

*As added by P.L.268-1989, SEC.1.*

## **IC 30-2-12-1.5**

### **"Community foundation or trust" defined**

Sec. 1.5. As used in this chapter, "community foundation or trust" means an organization, including:

- (1) a trust;
- (2) a nonprofit corporation;
- (3) an unincorporated association; or
- (4) any combination of a trust, a nonprofit corporation, and an unincorporated association;

that is either singly or in combination treated as a community trust under Section 170 of the Internal Revenue Code.

*As added by P.L.266-1995, SEC.1.*

## **IC 30-2-12-2**

### **"Endowment fund" defined**

Sec. 2. As used in this chapter, "endowment fund" means an institutional fund, or any part of the fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

*As added by P.L.268-1989, SEC.1.*

## **IC 30-2-12-3**

### **"Gift instrument" defined**

Sec. 3. As used in this chapter, "gift instrument" means a will, a deed, a grant, a conveyance, an agreement, a memorandum, a writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

*As added by P.L.268-1989, SEC.1.*

## **IC 30-2-12-4**

### **"Governing board" defined**

Sec. 4. As used in this chapter, "governing board" means the body responsible for the management of an institution or of an institutional fund.

*As added by P.L.268-1989, SEC.1.*

## **IC 30-2-12-5**

### **"Institution" defined**

Sec. 5. As used in this chapter, "institution" means any of the following:

- (1) An approved institution of higher learning (as defined in IC 20-12-21-3) and its related foundations.
- (2) An organization that:
  - (A) is an exempt organization under Section 501(c)(3) of the Internal Revenue Code;
  - (B) has an endowment fund with a fair market value of at least ten million dollars (\$10,000,000); and
  - (C) is not a religious organization.
- (3) A community foundation or trust.

*As added by P.L.268-1989, SEC.1. Amended by P.L.199-1991, SEC.1; P.L.266-1995, SEC.2.*

#### **IC 30-2-12-6**

##### **"Institutional fund" defined**

Sec. 6. (a) As used in this chapter, "institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes. The term does not include the following:

- (1) Except as provided in subsection (b), a fund held for an institution by a trustee that is not an institution.
- (2) A fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(b) The term includes a fund that is held exclusively for the benefit of a community foundation or trust regardless of the nature of the trustee or fiduciary.

*As added by P.L.268-1989, SEC.1. Amended by P.L.266-1995, SEC.3.*

#### **IC 30-2-12-7**

##### **Board resolution adopting chapter provisions**

Sec. 7. The governing board may operate under this chapter with respect to an institutional fund only if the governing board adopts the provisions of this chapter by resolution under the governing board's bylaws or under the charter of the institution.

*As added by P.L.268-1989, SEC.1.*

#### **IC 30-2-12-8**

##### **Expenditure of endowment fund assets; determination of fund historic value**

Sec. 8. (a) The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established as much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the endowment fund (as determined under subsection (b)) as is prudent under the standard established by section 12 of this chapter. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

(b) The governing board shall determine the historic dollar value of the endowment fund, which is the aggregate fair value in dollars

of:

- (1) an endowment fund at the time it became an endowment fund;
- (2) each subsequent donation to the endowment fund at the time the donation is made; and
- (3) each accumulation made under the applicable gift instrument at the time the accumulation is added to the endowment fund. The determination of historic dollar value made in good faith by the governing board is conclusive.

*As added by P.L.268-1989, SEC.1.*

#### **IC 30-2-12-9**

##### **Restriction on expenditure of net appreciation of fund assets; implied restrictions**

Sec. 9. Section 8 of this chapter does not apply if the applicable gift instrument indicates the donor's intention that net appreciation may not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only income, interest, dividends, rents, issues, or profits, or to preserve the principal intact, or a similar direction.

*As added by P.L.268-1989, SEC.1.*

#### **IC 30-2-12-10**

##### **Investment and management of institutional fund assets**

Sec. 10. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to specific limitations set forth in the applicable gift instrument or in the applicable law (other than law relating to investments by a fiduciary), may do any of the following:

- (1) Invest and reinvest an institutional fund in any real or personal property considered advisable by the governing board, whether or not the property produces a current return, including mortgages, stocks, bonds, debentures, and other securities of for profit or not-for-profit corporations, shares in or obligations of associations, limited liability companies, partnerships, or individuals, and obligations of any governmental entity, subdivision of that entity, or instrumentality of that entity.
- (2) Retain property contributed by a donor to an institutional fund as long as the governing board considers it advisable.
- (3) Include all or part of an institutional fund in a pooled or common fund maintained by the institution.
- (4) Invest all or part of an institutional fund in another pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

*As added by P.L.268-1989, SEC.1. Amended by P.L.8-1993, SEC.467.*

### **IC 30-2-12-11**

#### **Investment powers of board**

Sec. 11. Except as otherwise provided by the applicable gift instrument or by applicable law relating to institutions or institutional funds, the governing board may do the following:

- (1) Delegate to its committees, officers, agents (including investment counsel), or employees of the institution or the institutional fund the authority to act in place of the board in investment and reinvestment of institutional funds.
- (2) Contract with independent investment advisors, investment counsel or managers, banks, or trust companies to act in place of the board in investment and reinvestment of institutional funds.
- (3) Authorize the payment of compensation for investment advisory or management services.

*As added by P.L.268-1989, SEC.1.*

### **IC 30-2-12-12**

#### **Board's duty of ordinary business care and prudence**

Sec. 12. In operating under this chapter, the governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing, the governing body shall consider long and short term needs of the institution in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

*As added by P.L.268-1989, SEC.1. Amended by P.L.199-1991, SEC.2.*

### **IC 30-2-12-13**

#### **Release of restrictions on use or investment of institutional funds; cy pres doctrine**

Sec. 13. (a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) A release under this section may not allow an institutional fund to be used for purposes other than the purposes of the institution affected.

(c) This section does not limit the application of the doctrine of cy pres or the ability of the governing body through legal or equitable proceedings to obtain a release of a restriction in an applicable gift instrument.

*As added by P.L.268-1989, SEC.1. Amended by P.L.199-1991, SEC.3.*